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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/420,616	10/18/1999	WILLIAM JOSEPH BEYDA	99P7918US	3051

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SIEMENS CORPORATION
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EXAMINER
DUONG, FRANK

ART UNIT	PAPER NUMBER
2666	

DATE MAILED: 05/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/420,616	BEYDA ET AL.
	Examiner	Art Unit
	Frank Duong	2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 March 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 October 1999* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

1. This Office Action is a response to the amendment dated 03/17/2003. Claims 1-15 are pending in the application.

Drawings

2. The drawings are objected to because of the following informality:

FIG. 4, block 308, the branch from 308 to 312 should read –N--, and the branch from 308 to 310 should read --Y--.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 9-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Guy et al (USP 5,940,479) (hereinafter "Guy").

Regarding **claim 9**, in accordance with Guy reference entirety, Guy shows a telecommunication system (FIGs. 1 and 3) comprising:

a packet network (104);

a plurality of endpoints (*101A and 101B*) coupled to said packet network (104), each of said plurality of said endpoints including a jitter buffer (316);

wherein each of said plurality of endpoints including a jitter buffer controller (320) configured to adjust a packet size for communication over said packet network (*see col. 9, lines 34-65 and col. 17, line 39 to col. 18, line 14*).

Regarding **claim 13**, in addition to features recited in base claim 9 (see rationales pertaining the rejection of base claim 9 discussed above), Guy further discloses wherein said endpoints comprise client terminals (*106, 108 and 129*).

Regarding **claim 14**, in accordance with Guy reference entirety, Guy shows a telecommunication system (FIGs. 1, 2 and 3) comprising:

a codec (*FIG. 2 ; block 206A*);

a jitter buffer (*FIG. 2; block 206B and FIG. 3; block 316*) coupled to an input of the codec;

a packetizer (*FIG. 2; block 206B and FIG. 3; blocks 318 and 320*) coupled to an output of the codec; and

a controller (FIG. 2; block 206B and FIG. 3; block 320) coupled to the codec, the jitter buffer, and the packetizer, wherein the controller is configured to cause the packetizer to adjust a packet size if said packet size is related to a jitter buffer size

according to predetermined criteria (*network delay*) (*see col. 17, line 30 to col. 18, line 14*).

Regarding **claim 15**, in addition to features recited in base claim 14 (see rationales pertaining the rejection of base claim 14 discussed above), Guy further discloses wherein the predetermined criteria (*network delay*) is a threshold fraction of the jitter buffer size (*see col. 17, lines 57-58*).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guy.

Regarding **claim 1**, in accordance with Guy reference entirety, Guy discloses a telecommunication node (Fig. 3), comprising:

a jitter buffer (316) (see col. 9, lines 34-39);

means for receiving (306, 302 and 304) one or more information packets (*voice signals*), said receiving means including means for storing (304) said one or more information packets in said jitter buffer (*see col. 8, lines 56-63*); and

means for adjusting (320) a length of said one or more information packets based on a network delay (*see col. 9, lines 59-65 and col. 17, line 39 to col. 18, line 4*).

Guy fails to explicitly teach adjusting a length of the packet based on the size of said buffer. However, at col. 9, lines 34-39, 59-65, Guys discloses the voice enhancement unit can also dynamically adjust the rate of the bit stream from 8 kbps to a slower rate, e.g., 6.4 kbps or 4.8 kbps. Moreover, at col. 17, lines 65-67, Guy discloses increasing the jitter buffer 316 also increases the network delay since the jitter buffer 316 stores the voice frames for a time duration that is proportional to the size of the jitter buffer 316. And at col. 10, lines 64-65, Guy also teaches converting a data packet to a compatible format is apparent to persons skilled in the relevant art. All of the above recitation relates to "*adjusting a length of the packet based on the size of said buffer*" to enhance the voice signal quality as well as compatible format.

Thus, it would have been obvious to those skilled in the art to adjust a length of the packet based on the size of the jitter buffer with a motivation to convert voice signals into a network compatible format.

Regarding **claim 2**, in addition to features recited in base claim 1 (see rationales pertaining the rejection of base claim 1 discussed above), Guy further discloses said adjusting means (*320*) including means for adjusting said length to a predetermined fraction (*network delay*) of said size of said jitter buffer (*see col. 17, line 39 to col. 18, line 13*).

Regarding **claim 3**, in addition to features recited in base claim 2 (see rationales pertaining the rejection of base claim 2 discussed above), Guy further discloses means for monitoring (*320*) a size of said jitter buffer during a communication (*see col. 17, lines 60-61*).

Regarding **claim 4**, in addition to features recited in base claim 3 (see rationales pertaining the rejection of base claim 3 discussed above), Guy further discloses said adjusting means (320) including means responsive to said monitoring means for adjusting said length to a new size of said jitter buffer (316) during said communication (*see col. 17, line 30 to col. 18, line 14*).

Regarding **claim 5**, in accordance with Guy reference entirety, Guy discloses a telecommunication method (*FIG. 3*), comprising:

receiving (306, 302 and 304) one or more information packets, said receiving including storing said one or more information packets in a jitter buffer (316) (*see col. 17, lines 15-38*); and

adjusting (320) a length of said one or more information packets based on a network delay (*see col. 17, line 39 to col. 18, line 14*).

Guy fails to explicitly teach adjusting a length of the packet based on the size of said buffer. However, at col. 17, lines 65-67, Guy discloses increasing the jitter buffer 316 also increases the network delay since the jitter buffer 316 stores the voice frames for a time duration that is proportional to the size of the jitter buffer 316. And at col. 10, lines 64-65, Guy also teaches converting a data packet to a compatible format is apparent to persons skilled in the relevant art.

Thus, it would have been obvious to those skilled in the art to adjust a length of the packet based on the size of the jitter buffer with a motivation to convert voice signals into a network compatible format.

Regarding **claim 6**, in addition to features recited in base claim 5 (see rationales pertaining the rejection of base claim 5 discussed above), Guy further discloses said adjusting (*320*) including adjusting said length to a predetermined fraction (*network delay*) of said size of said jitter buffer (*see col. 17, line 39 to col. 18, line 13*).

Regarding **claim 7**, in addition to features recited in base claim 6 (see rationales pertaining the rejection of base claim 6 discussed above), Guy further discloses monitoring (*320*) a size of said jitter buffer during a communication (*see col. 17, lines 60-61*).

Regarding **claim 8**, in addition to features recited in base claim 7 (see rationales pertaining the rejection of base claim 7 discussed above), Guy further discloses said adjusting (320) including adjusting said length to a new size of said jitter buffer (316) during said communication (*see col. 17, line 30 to col. 18, line 14*).

5. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guy in view DataBeam Corporation White Paper (*A Primer on the H.323 Series Standard, pages 1-17, May 15, 1998*) (hereinafter "DataBeam").

Regarding **claims 10-11**, Guy teaches the features recited in base claim 9 (*see rationales pertaining the rejection of base claim 9 discussed above*). Moreover, at col. 17, lines 60-62, Guy further discloses jitter buffer 316 has a size that is set by a user as a configuration protocol.

Guy fails to explicitly discloses wherein said buffer controller is configured to compare a proposed packet size with a threshold value representative of a fraction of

said jitter buffer size responsive to an H.323 terminal capability exchange (*negotiate channel usage*).

On the other hand, DataBeam (*see the document entirety*) provides an overview of the H.323 standard providing a foundation for audio, video and data communications across IP-based networks. Specifically, on page 4, DataBeam discloses all H.323 terminals must also support H.245, which is used to negotiate channel usage and capabilities.

It would have been obvious to those skilled in the art to implement the H.323 standard with the negotiating channel usage into Guy's system to arrive the claimed invention with a motivation of allowing users to communicate without concern for compatibility.

Regarding **claim 12**, Guy discloses wherein said jitter buffer controller (320) is configured to monitor a size of said jitter buffer during a communication and adjust a packet to a new size during a communication (*see col. 17, line 39 to col. 18, line 14*).

Thus, Guy in view DataBeam discloses the claimed invention.

Response to Arguments

6. Applicant's arguments filed 03/17/2003 have been fully considered but they are not persuasive. Applicants' arguments will be addressed hereinbelow in the order in which they appear in the response filed 03/17/2003.

In the Remarks of the outstanding response, on page 2, last paragraph continues to

page 3, first paragraph, Applicants asserts the branches of Fig. 4 of the drawings are correctly labeled.

In response Examiner respectfully disagrees and would like Applicants revisit Fig. 4, block 308. In Fig. 4, it reads if "packet size is less than or equal threshold T" (block 308), then "establish media channel" (block 312). It is in contrast to the specification disclosed on page 7.

In the Remarks of the outstanding response, on page 3, in reference to claims 9-15, Applicants assert "*As discussed in the Specification ... "wherein each of said plurality of endpoints includes a jitter buffer controller configured to adjust a packet size for communication over said packet network;" and claim 14 recites "wherein the controller is configured to cause to packetizer to adjust a packet size if said packet size is related to a jitter buffer size according to predetermined criteria." In contrast, Guy appears instead to merely adjust the size of the jitter buffer, not the packets*".

In response Examiner respectfully disagrees. Examiner understands Applicants' invention which tries to establish a common packet prior the establishing a connection between the H.323 endpoints by setting a threshold, checking jitter buffer against packet sizes and adjusting the packet size if necessary, then establishing the connection. However, the claims do not reflect the Applicants' invention. As present, Guy reference as clearly pointed out in the Office Action still reads on the claimed invention. In Guy reference, column 17, line 39 to column 18, line 14, in so many words, Guy states "*the present invention utilizes a jitter buffer 316 to allow for fluctuations in the receipt of packets. In the preferred embodiment, the jitter buffer 316*

is a first in first out buffer that stores voice frames and has a size that is set in response to network end-to-end characteristics, e.g., network delay, that can be determined during the call set-up procedure. In an alternate embodiment, the jitter buffer 316 can also be adjusted dynamically during the call or can be sent by a user as a configuration protocol, for example". Adjusting the jitter buffer 316 is implicitly or inherently adjusting the packet because Guy further states "*If a packet is late 846, e.g., if the jitter buffer contents up to the packet have been used, then the voice enhancement unit 320 recreates 848 the late packet*".

Contradistinction to the Applicants' assertion, Guy reference, as clearly pointed out in the Office Action, still reads on the claimed invention as presented in the present claims.

As per claims 1-8 and 10-12, the same rationales are applied for the response to Applicants' arguments.

Examiner believes an earnest attempt have been made in addressing all of the Applicants' arguments. Applicants are advice to further amend the claims to reflect Applicants' invention as well as to distinguish the claimed invention from that disclosed by Guy. Due to the arguments are non-persuasive, the rejection from the last Office Action is maintained.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Duong whose telephone number is (703) 308-5428. The examiner can normally be reached on 7:00AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (703) 308-5463. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

Frank Duong
May 21, 2003

Seema S. Rao
SPE AU-2666

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